evidence on this point I have come to the conclusion that Musbah did not take a metal screen into the port locker and that no metal screen was put up to prevent sparks and molten metal from being thrown into the port locker. In arriving at this conclusion I have rejected the evidence of Ow Fook Choy, who, on being recalled to the witness box on the day following the cross-examination of Musbah on this point, stated for the first time that he saw a metal screen in the port locker. In my opinion Musbah failed to put up the metal screen because he was not aware of the fact that burning was to take place into the port locker and no one had drawn his attention to that fact. In view of the fact that sparks and molten metal were normally thrown to a distance of six to eight feet it was a precaution which should have been taken, and failure to do so is, in my view, clearly evidence of negligence. The danger of fire to parts of the port locker and the timber used to box in the exposed portion of the fore and aft bulkhead should have been apparent to the plaintiffs' employees. The inspection made by Ow Fook Choy after the burning operations were over must have been of a cursory nature. This is borne out by the fact that about twenty minutes after his inspection fire broke out in the vicinity of the place inspected by him. In my opinion all the evidence points to the fact that the fire started towards the forward part of the port locker and spread to the after part of the port locker and No. 2 hold. Those witnesses who saw flames at the after end of the vessel came on the scene nearly two hours after the fire started. In my view the precautions taken by the plaintiffs to guard against fire were inadequate and the inspection carried out after the burning operations were completed was done in a careless manner. It follows, therefore, in my judgment, that the plaintiffs have failed to discharge the burden which lies on them of showing that they were not negligent.

There were a number of other matters regarding which Musbah gave evidence which was contradicted by other witnesses who were called on behalf of the plaintiffs. I do not consider it necessary to deal with this evidence in detail. As a witness, Musbah was in my opinion both unsatisfactory and unreliable.

I turn now to consider various theories which were put forward by counsel for the plaintiffs to account for the outbreak of fire on the vessel. The first theory was that it could have been caused by the workmen who were engaged in clearing away rubbish from No. 2 hold throwing away a lighted cigarette end or half-burnt match which would start insulation material smouldering. As to this theory it is to be observed, first, that these workmen had, as I have said, left No. 2 hold before burning operations commenced and, secondly, that there is no evidence that anyone on board the vessel was smoking or threw away a cigarette end or match. The second theory was described as an electrical fault in removing composition and the third theory as high resistance earth during the course of welding. It is sufficient to say that no evidence was given in support of either of these theories. The fourth and last theory was that there was a possibility of spontaneous combustion in the insulation material which had been removed and put into bags. This last theory was not pursued by counsel for the plaintiffs. As no other explanation has been put forward on behalf of the plaintiffs it follows that they have failed to show that the outbreak of fire might more probably have happened in a manner which did not connote negligence on their part.

It is clear that in carrying out the work which was entrusted to them and which involved the bringing of fire on the vessel, the plaintiffs failed to take precautions which were not only commercially practicable but were, in the circumstances, ordinary and usual. In my judgment, in failing to take such precautions, the plaintiffs were guilty of negligence.

Counsel for the plaintiffs has conceded that if the plaintiffs are found guilty of negligence the plaintiffs' claim must fail. On the other hand the defendants have succeeded on their counterclaim and are entitled to recover damages from the plaintiffs. There will therefore be judgment for the defendants with costs on the claim as well as on the counterclaim. The damages payable by the plaintiffs to the defendants will be assessed by the Registrar.

Judgment for the defendants.

Solicitors: *Donaldson & Burkinshaw; Drew & Napier.*

HOCK HIN & CO. v. ALLWIE & CO. LTD.

[O.C.J. (Buttrose J.) February 10, 1961]

[Singapore — Suit No. 898 of 1961]

Contract — Price of goods sold and delivered — No agreed price — Whether s.8(2) of Sale of Goods Act, 1893 applied.

This was an action for the price of goods sold and delivered by the plaintiffs to the defendants at the defendants' request. The claim was for $9,273.53 but the defendants admitted liability of $4,847.35 for which the plaintiffs signed judgment and obtained payment after levying execution. The defendants denied liability of the remaining amount and stated in the pleadings that no prices were agreed but it was an implied term of the verbal contract that the goods were to be at reasonable prices or alternatively at fair market value and a quantity of them were not. At the trial the defendants stated that it was an express term of the contract that the plaintiffs would supply the goods at fair market prices and that the plaintiffs had agreed to give the defendants a credit note for the amount alleged to be overpaid. It was also argued by the defendants that as no price was fixed they were only liable to pay a reasonable price by virtue of section 8(2) of the Sale of Goods Act, 1893.

Held: (1) it is not open to the defendants on the pleadings as they stand to raise these defences;

(2) it was not an express term of the contract that the goods should be supplied at fair market prices or that the plaintiffs had agreed to give a credit note;

(3) the price of the goods was determined by the dealing between the parties and consequently the defendants were precluded from having recourse to section 8(2) of the Sale of Goods Act, 1893.

ACTION.

K. S. Chung for the plaintiffs.

N. Leicester for the defendants.

Buttrose J.: This was an action for the price of goods sold and delivered by the plaintiffs to the defendants at the defendants' request. The claim was for $9.273.53 but the defendants admitted liability for the sum of $4.847.35 for which the plaintiffs signed judgment and ultimately obtained payment after levying execution. The defendants while admitting having been supplied with the goods denied liability in respect of the balance, namely, $4,426.18. The defendants' case on the pleadings, by which of course they are bound, was that by a verbal contract made between the parties about the beginning of 1957 it was agreed that the plaintiffs should supply the defendants with materials in respect of their various contracts for sanitary installations upon written orders given by the defendants to the plaintiffs. No prices were agreed upon but it was an implied term of the verbal contract that the goods were to be at reasonable prices or alternatively at fair market value and a quantity of them were not.

The defendants' case at the trial was firstly that it was an express term of the contract that the plaintiffs would supply the goods at fair market price and secondly that the plaintiffs had agreed to give the defendants a credit note for the amounts alleged to be overcharged. In the view I take it is not open to the defendants on the pleadings as they stand to raise these defences.

In any event, however, I am quite satisfied that it was not an express term of the contract that the goods should be supplied at fair market price or that the plaintiffs ever agreed to give a credit note as alleged by the defendants. That the plaintiffs were prepared to and did in fact check their bills at the defendants' request in order to see if there were any items which had been overcharged there can be no doubt, but I am quite satisfied on the evidence that the plaintiffs never agreed to give a credit note in respect of them.

Now it was not in dispute that there was no fixed price agreed upon between the parties and the defendants relied on section 8 of the Sale of Goods Act, 1893 which reads as follows:—

"8.—(1) The price in a contract of sale may be fixed by the contract, or may be left to be fixed in manner thereby agreed, or may be determined by the course of dealing between the parties.

(2) Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case."

The defendants contended that as no price was agreed upon they were only liable to pay a reasonable price by virtue of subsection (2) and as the price charged by the plaintiffs was unreasonable, any such sums as were in excess of what was reasonable could not be recovered. But before the provisions of the subsection can be called in aid, it must first be established that the price cannot be ascertained in any of the three ways provided for in subsection (1).

The evidence of the defendant company's manager was that his company had been dealing with the plaintiffs since 1956 and throughout 1957 and 1958. The facts were that the goods were delivered by the plaintiffs to the defendants at the defendants' request and bills were rendered to the defendants either on the same day as the delivery or within two or three days thereof. At the end of every month a statement of account was rendered showing the total amount of goods delivered during the month and their cost together with any sums outstanding from previous months.

The defendants from time to time paid various sums on account of the general balance due and the 1957 accounts were settled in full in 1958. The defendants continued throughout the whole of 1958 to order more goods, which they admit being supplied with and using, in ever increasing quantities despite the fact apparently that they claimed they were being overcharged in April 1958.

In my view the price was determined by this course of dealing between the parties and consequently the defendants are precluded from having recourse to subsection (2) of section 8.

I think perhaps I should add that even if subsection (2) did apply, there is no satisfactory evidence before me as to what was a reasonable price. The effect of the evidence of the defendants' witnesses was that they could not say what other firms would have charged as each firm had its own price.

In the result therefore there must be judgment for the plaintiffs for $4,426.18 together with interest thereon at the rate of 6 per centum per annum from the 3rd July, 1959 until the date hereof and costs on the higher scale.

Claim allowed.

Solicitors: *Marshall & Chung; Leicester & Chen.*